

AMENDED IN ASSEMBLY SEPTEMBER 9, 1997

AMENDED IN ASSEMBLY SEPTEMBER 8, 1997

AMENDED IN ASSEMBLY SEPTEMBER 2, 1997

AMENDED IN SENATE JUNE 23, 1997

AMENDED IN SENATE JUNE 9, 1997

AMENDED IN SENATE MAY 22, 1997

## SENATE BILL

**No. 879**

**Introduced by Senator Johnston** and Assembly Member  
Machado

**(Principal coauthors: Senator Costa and Assembly Members  
Olberg and Thomson)**

(Coauthors: Assembly Members ~~Frusetta~~, ~~Margett~~, ~~Baca~~,  
*Cardoza*, *Frusetta*, *Honda*, *Margett*, *Papan*, Poochigian, and  
Woods)

February 26, 1997

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An act to amend Section 2081 of, and to add Sections 2052.1  
and 2081.1 to, the Fish and Game Code, relating to  
endangered species.

### LEGISLATIVE COUNSEL'S DIGEST

SB 879, as amended, Johnston. Endangered species.

Under the existing California Endangered Species Act, it is  
a misdemeanor to import, export, take, possess, purchase, or  
sell any species that the Fish and Game Commission has  
determined to be an endangered species or a threatened  
species, as defined, except as specified. Existing law requires

the commission to maintain lists of threatened species and endangered species.

Existing law permits the Department of Fish and Game to authorize the import, export, take, or possession of any endangered species, threatened species, or candidate species for scientific, educational, or management purposes.

This bill would, additionally, authorize the department to issue a permit to authorize the incidental take of those species under specified conditions.

The bill would provide that nothing in the California Endangered Species Act or any other law prohibits the taking or incidental taking of any endangered, threatened, or candidate species, if the taking was authorized by the department, as specified, if the application process for the authorization commenced on or before April 10, 1997, and the department approved the authorization to take within specified timeframes. The bill would deem all of those permits, memoranda of understanding, plans, agreements, and amendments thereto, except as specified, to be in full force and effect as of the date approved or entered into by the parties insofar as they authorize the take of species.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2052.1 is added to the Fish and  
2 Game Code, to read:  
3 2052.1. The Legislature further finds and declares  
4 that if any provision of this chapter requires a person to  
5 provide mitigation measures or alternatives to address a  
6 particular impact on a candidate species, threatened  
7 species, or endangered species, the measures or  
8 alternatives required shall be roughly proportional in  
9 extent to any impact on those species that is caused by  
10 that person. Where various measures or alternatives are  
11 available to meet this obligation, the measures or  
12 alternatives required shall maintain the person's  
13 objectives to the greatest extent possible consistent with  
14 this section. All required measures alternatives shall be



1 capable of successful implementation. This section  
2 governs the full extent of mitigation measures or  
3 alternatives that may be imposed on a person pursuant to  
4 this chapter. ~~For purposes of this section only, “person”~~  
5 ~~means nonstate entities. This section shall not affect the~~  
6 ~~state’s obligations set forth in Section 2052.~~

7 SEC. 2. Section 2081 of the Fish and Game Code is  
8 amended to read:

9 2081. The department may authorize acts that are  
10 otherwise prohibited pursuant to Section 2080, as follows:

11 (a) Through permits or memorandums of  
12 understanding, the department may authorize  
13 individuals, public agencies, universities, zoological  
14 gardens, and scientific or educational institutions, to  
15 import, export, take, or possess any endangered species,  
16 threatened species, or candidate species for scientific,  
17 educational, or management purposes.

18 (b) The department may authorize, by permit, the  
19 take of endangered species, threatened species, and  
20 candidate species if all of the following conditions are  
21 met:

22 (1) The take is incidental to an otherwise lawful  
23 activity.

24 (2) The impacts of the authorized take shall be  
25 minimized and fully mitigated. The measures required to  
26 meet this obligation shall be roughly proportional in  
27 extent to the impact of the authorized taking on the  
28 species. Where various measures are available to meet  
29 this obligation, the measures required shall maintain the  
30 applicant’s objectives to the greatest extent possible. All  
31 required measures shall be capable of successful  
32 implementation. For purposes of this section only,  
33 impacts of taking include all impacts on the species that  
34 result from any act that would cause the proposed taking.

35 (3) The permit is consistent with any regulations  
36 adopted pursuant to Sections 2112 and 2114.

37 (4) The applicant shall ensure adequate funding to  
38 implement the measures required by paragraph (2), and  
39 for monitoring compliance with, and effectiveness of,  
40 those measures.

1 (c) No permit may be issued pursuant to subdivision  
2 (b) if issuance of the permit would jeopardize the  
3 continued existence of the species. The department shall  
4 make this determination based on the best scientific and  
5 other information that is reasonably available, and shall  
6 include consideration of the species' capability to survive  
7 and reproduce, and any adverse impacts of the taking on  
8 those abilities in light of (1) known population trends; (2)  
9 known threats to the species; and (3) reasonably  
10 foreseeable impacts on the species from other related  
11 projects and activities.

12 (d) The department shall adopt regulations to aid in  
13 the implementation of subdivision (b) and the  
14 requirements of Division 13 (commencing with Section  
15 21000) of the Public Resources Code, with respect to  
16 authorization of take. The department may seek  
17 certification pursuant to Section 21080.5 of the Public  
18 Resources Code to implement subdivision (b).

19 SEC. 3. Section 2081.1 is added to the Fish and Game  
20 Code, to read:

21 2081.1. Nothing in this chapter or in any other  
22 provision of law prohibits the taking or the incidental  
23 taking of any endangered, threatened, or candidate  
24 species if the taking was authorized by the department  
25 through a permit or memorandum of understanding, or  
26 in a natural communities conservation plan, habitat  
27 conservation plan, habitat management plan, or other  
28 plan or agreement approved by or entered into by the  
29 department, or in an amendment to such a permit,  
30 memorandum of understanding, plan, or agreement and  
31 all of the following conditions are met:

32 (a) The application process commenced on or before  
33 April 10, 1997.

34 (b) The department approved the permit,  
35 memorandum of understanding, plan, agreement, or  
36 amendment thereto within either of the following  
37 timeframes:

38 (A) On or before ~~September 1~~ April 10, 1997.

39 (B) Between ~~September 1~~ April 10, 1997, and January  
40 1, 1998, and the department also certifies that the permit,

1 memorandum of understanding, plan, agreement, or  
2 amendment thereto meets the substantive criteria of  
3 subdivision (b) of Section 2081.

4 The permits, memoranda of understanding, plan,  
5 agreements, and amendments thereto described in this  
6 section are deemed to be in full force and effect, as of the  
7 date approved or entered into by the parties insofar as  
8 they authorize the take of species. This section does not  
9 apply to the “Emergency Management Measures  
10 Permit” issued by the department on March 15, 1995.

11 SEC. 4. It is the intent of the Legislature that the  
12 “management” provision of subdivision (a) of Section  
13 2081 of the Fish and Game Code not be used to authorize  
14 the take of candidate, threatened, or endangered species  
15 incidental to otherwise lawful activities.

16 *It is the intent of the Legislature that the term*  
17 *“memorandum of understanding,” as used in Sections*  
18 *2081.5, 2110, and 2112, means “permit” for purposes of*  
19 *subdivision (b) of Section 2081.*

